

A New Castle City Board of Adjustment Hearing took place on March 12, 2008 at 7:30 p.m. in the City of New Castle's Town Hall.

Members Present: Mayor John F. Klingmeyer
David Athey, City Engineer
Roger Akin, City Solicitor

The meeting was called to order at 7:45 p.m. by Mayor Klingmeyer. Roll call was taken. Mayor Klingmeyer read the Notice of Public Hearing that states, "An application has been filed by Riverbend Communities LLC, 1601 Concord Pike, Wilmington, DE 19803 for a variance from the required rear yard setback from 25 feet to 15 feet (a 10 foot reduction) on property they own in the Riverbend at Old New Castle subdivision, New Castle, Delaware, including subdivision lot numbers 1 thru 31, 66 thru 100, 103 thru 178, and 206 thru 210, also known as tax parcel numbers 21-016.00-008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 176, 175, 174, 173, 172, 171, 170, 169, 168, 167, 166, 165, 164, 163, 162, 161, 126, 125, 124, 123, 122, 121, 120, 119, 118, 117, 094, 093, 092, 091, 090, 089, 088, 087, 086, 085, 084, 083, 082, 081, 080, 079, 078, 077, 076, 075, 074, 073, 072, 071, 070, 067, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 113, 114, 115, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 058, 062, 063, 064, 065, & 066 and 21-020.00-001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, & 028.

All parcels in the Riverbend at Old New Castle subdivision are zoned residential – R3 and the variance sought is to the requirement of Chapter 230 – the schedule of district regulations requiring a 25 foot rear yard setback.

For the purpose of considering this application, the Board of Adjustment will hold a public hearing on March 12, 2008 at 7:30 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware."

The Mayor informed they had notice of an affidavit of publication from the NewsJournal of 2/26/08 and the New Castle Weekly of 2/25/08. Verification of these affidavits of publication will be done with the town.

(Mr. Donald Isken of Morris, Nichols, Arsht & Tunnell, representing Riverbend Communities LLC remains sworn in by Mayor Klingmeyer from the previous hearing.)

Mr. Isken provided a detailed description of the applicant's request. Riverbend Communities LLC acquired the subject property from Parkway Gravel which is the owner of the remaining lots in the Riverbend subdivision. Parkway acquired the property in August, 1999, had it annexed into city limits and zoned partly industrial office and partly open space recreational. Their subdivision plan was approved for an industrial park to contain eight buildings consisting of 450,000 square feet of space. That industrial office park was never developed. They then had that portion of the property zoned industrial office rezoned into the R3

category. Following that rezoning the Riverbend subdivision plan was approved containing 210 single-family lots comprised of 80 town homes and 130 detached single-family lots. *(Distributed a diagram of subdivision to Board members.)* The Mayor and City Council approved this subdivision plan under Ordinance No. 499 in March 2007. Since that time the residential housing market has suffered its steepest decline in history. In order to alleviate the negative market conditions the applicant has developed a program to develop homes in Riverbend with larger footprints and offer additional options to buyers at no additional cost to home buyers. To accomplish this the applicant is requesting a 10 foot variance from New Castle's zoning code relating to rear yard setbacks. Under the New Castle City zoning code there are four tests that must be satisfied in order to be eligible for the requested variance. They are: the applicant must demonstrate that special conditions or circumstances exist that are peculiar to the lands, structures or buildings involved that are not applicable to other lands in the same zoning district; that the literal interpretation of provisions of the City's Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district; that special conditions/circumstances do not result from the applicant's actions; that granting the variance requested will not confer on the applicant any special privilege that is denied by the City Zoning Ordinance to other lands, structures, or buildings in the same zoning district. He feels that the applicant has satisfied these four conditions and is legally entitled to be granted the variance requested subject to this Board's approval. This is an age-restricted, over 55, zero lot line, residential subdivision which is not normally covered under the City's zoning classification. The R3 classification for Riverbend was selected because it most closely resembled the closed project that allows the developer's concept to develop the property in smaller single-family lots and town homes. Age-restricted communities like Riverbend must offer more amenities to residents than a standard, customary housing development while also offering smaller lot sizes in order to reduce/minimize maintenance obligations to the homeowner. In over-55 communities the primary selling point is to provide as many amenities and services to residents as is feasible while minimizing the residents' personal obligations to upkeep of the home and property. The proposed rear yard reduction from 25 feet to 15 feet would only occur to those lots backing up to private open space. It would have no impact on adjacent lots which contain homes. Average single-family home prices will be \$400,000-\$600,000 which mandates using custom home and design standards, thus requiring a larger footprint. Imposing the standard rear yard requirement will result in a need to reduce the size of the homes and eliminate many of the options necessary to make the homes marketable. Granting the requested variance will not infer special privileges to developers of the Riverbend subdivision that would not be enjoyed by other developers in the same zoning classification.

(Mr. Jeff Bergstrom, Building Inspector, was sworn in by Mayor Klingmeyer.)

Mayor Klingmeyer asked Mr. Bergstrom why he would not grant the developer a building permit based on their application. His response was that they cannot obtain a building permit for the proposed size of the houses; the applicant doesn't meet the requirements of the code. They would need approval of a variance request before applying for a building permit.

Mr. Athey expressed concern with this request coming before the Board of Adjustment. This Board was not created to grant 180 plus variances when there is another process in the Code that can be used. He questioned if a planned unit development (PUD) was considered because it allows more flexibility. Mr. Isken said there was discussion at the time of rezoning. The final decision was that it didn't seem appropriate under the circumstances at the time so R3 zoning was sought. The City and applicant mutually agreed that R3 zoning was appropriate.

Mr. Akin said that the Planning Commission has the authority to authorize deviations from a number of dimensions including rear yard requirements. The Board of Adjustment is not involved in the process of seeking variances if the Planning Commission has authorized a reduced rear yard setback.

The Mayor questions whether the request can be handled as a variance or under the procedure Mr. Akin refers to. He does not feel that the applicant has satisfied any of the four conditions required.

Mr. Athey appreciates that the City does not have any age-restricted zoning classification and using R3 was negotiated to be the best zoning. However, he does not believe this is the appropriate body to decide this issue. There is a provision in the Code that allows the applicant to do what they want to do.

Mr. Athey made a motion to deny the rear yard variance as requested in the Mayor's opening record. Mr. Akin seconded the motion. The motion was approved by unanimous vote. Board members then provided the rationale for their vote.

Mr. Akin stated that asking for such a large amount of variances is unprecedented. Typically this Board handles single properties or not more than five or six lots at a time where variances are sought. When the developer acquired the land they understood the restrictions for variances that would apply. Economic factors can play a partial role in the consideration of a variance but as a general rule they can't be the sole reason and from the presentation tonight you state you wish to increase the footprint size to allow for more amenities in order to make them more attractive to buyers. It appears that this is solely an economic decision. He does not believe the applicant has satisfied the four factors in Section 230-57(c) that is required. These variances are large; we are being asked to excuse 40% of the rear yard setback requirements. Granting this number of variances simply to make the homes more marketable is not a valid reason to grant the number of variances being requested. He is not voting to approve the application.

Mr. Athey does not believe this Board is the appropriate body to hear an application of this size and there are provisions elsewhere in the Code that addresses what the applicant seeks to do.

Mayor Klingmeyer feels the application fails to comply with Sections 1, 2, 3, and 4 and it would be a violation of the City Zoning Code to grant the application.

The application was denied.

Adjournment

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Debbie Turner
Stenographer

Applicant Exhibit 1 – Exhibit to Accompany Variance Request- Riverbend
Subdivision